

HOUSE No. 4123

The Commonwealth of Massachusetts

PRESENTED BY:

Robert P. Spellane

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to an economic development reinvestment program.

PETITION OF:

NAME:

Robert P. Spellane

DISTRICT/ADDRESS:

13th Worcester

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO AN ECONOMIC DEVELOPMENT REINVESTMENT PROGRAM.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapter 23A of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by adding the following 3 sections:- Section 63. As used in sections 64 and 65 the following terms, unless the context appears otherwise, shall have the following meanings:- "Abandoned property reinvestment project", an eligible urban reinvestment project that contains a building that has been completely vacant for no less than 6 months or 75 per cent of a building that has been vacant for no less than 12 months, or a building that is not capable of being renovated to return it to a viable business condition as determined by the secretary. "Approved investment", an investment approved by the commissioner under subsection (f) of this section. "Control", with respect to a trust, means ownership, directly or indirectly, of 50 per cent or more of the beneficial interest in the principal or income of such trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, other than paragraph (3) of such section. "Eligible industrial site investment project", an investment made in real property, or in improvements to real property, located within the commonwealth: (A) (i) That has been subject to chapter 21E, or (ii) is a "facility", as defined in 42 USC 9601(9); (B) that, if remediated, renovated or demolished in accordance with applicable law and regulations and the standards of remediation of the department of environmental protection and used for business purposes, will add significant new economic activity and employment in the municipality in which the investment is to be made, and will generate additional tax revenues to the state; (C) for which the use of the abandoned, urban and industrial site reinvestment program will be necessary to attract private investment to the project; (D) the business use of which would be economically viable and would generate direct and indirect economic benefits to the state that exceed the amount of the investment during the period for which the tax credits granted pursuant to this act

are granted; (E) that is subject to an environmental cleanup action pursuant to section 29A of chapter 23G; and (E) that is, also an eligible urban reinvestment project. "Eligible municipality", (A) a municipality with an area designated as an economic target area pursuant to statute, or (B) a gateway city.

"Eligible project", an eligible urban reinvestment project, abandoned property reinvestment project or an eligible industrial site investment project or all. "Eligible urban reinvestment project", an investment: (A) That would add significant new economic activity and new jobs in a new facility in the eligible municipality in which the investment is to be made, and will generate significant additional tax revenues to the state or the municipality; (B) for which the use of the abandoned, urban and industrial site reinvestment program will be necessary to attract private investment to an eligible municipality; (C) that is economically viable; (D) for which the direct and indirect economic benefits to the state outweigh the costs of the investment; (E) increase employment for the creation of at least 10 new quality jobs at 150 per cent of the commonwealth's minimum wage; and (F) be contained within a gateway city. "Fund manager", a fund manager registered in accordance with subsection (d) of this section. "Gateway city", shall be a city that has lost one third of its manufacturing jobs since 1980; and has 30 per cent of its residents living below the federal poverty level; and has educational attainment levels below 16.5 per cent of residents possessing a four-year college degree or one of the following cities: Brockton, Fall River, Fitchburg, Haverhill, Holyoke, Lawrence, Lowell, New Bedford, Pittsfield, Springfield and Worcester. "Investment", all amounts invested in a project, whether directly or through a fund, directly or indirectly, on behalf of a taxpayer, including, but not limited to, (A) direct investments made by the taxpayer, and (B) loans made to the fund for the benefit of the taxpayer which loans are guaranteed by a taxpayer. "Income year", with respect to entities subject to taxation under chapter 63 the income year as determined under each of said chapters, as the case may be. "New job", a job that did not exist in the business of a subject business in the commonwealth prior to the subject business' application to the commissioner for an eligibility certificate under this section for a new facility and that is filled by a new employee, but does not mean a job created when an employee is shifted from an existing location of the subject business in this state to a new facility. "New employee", a person hired by a subject business to fill a position for a new job or a person shifted from an existing location of the subject business outside this state to a new facility in this state, provided (A) in no case shall the total number of new employees allowed for purposes of this credit exceed the total increase in the taxpayer's employment in this state, which increase shall be the difference between (i) the number of employees employed by the subject business in this state at the time of application for an eligibility certificate to the commissioner plus the number of new employees who would be eligible for inclusion under the credit allowed under this section without regard to this calculation, and (ii) the highest number of employees employed by the subject business in this state in the year preceding the subject business' application for an eligibility certificate to the commissioner, and (B) a person shall be deemed to be a "new employee" only if such person's duties in connection with the operation of the facility are on a regular, full-time, or equivalent

thereof, and permanent basis. "New facility", a facility which (A) is acquired by, leased to, or constructed by, a subject business on or after the date of the subject business' application to the commissioner for an eligibility certificate under this section, unless, upon application of the subject business and upon good and sufficient cause shown, the commissioner waives the requirement that such activity take place after the application, and (B) was not in service or use during the one-year period immediately prior to the date of the subject business' application to the commissioner for an eligibility certificate under this section, unless upon application of the subject business and upon good and sufficient cause shown, the commissioner consents to waiving the one-year period.

"Office", the executive office of housing and economic development. "Pro rata share", the percentage amount invested by an individual investor in an approved investment bears to the total amount of the approved investment actually invested in the project, or in the case of a taxpayer to whom credits are transferred under this section, the percentage of the amount of credits transferred bears to the total amount of the approved investment actually invested in the project. "Recapture amount", the amount by which the approved investment exceeds the amount of state revenue generated by the approved investment. "Related person", (A) A corporation, limited liability company, partnership, association or trust controlled by the taxpayer; (B) an individual, corporation, limited liability company, partnership, association or trust that is in control of the taxpayer; (C) a corporation, limited liability company, partnership, association or trust controlled by an individual, corporation, limited liability company, partnership, association or trust that is in control of the taxpayer; or (D) a member of the same controlled group as the taxpayer. For purposes of this section, "control", with respect to a corporation, means ownership, directly or indirectly, of stock possessing 50 per cent or more of the total combined voting power of all classes of the stock of such corporation entitled to vote. "Secretary", the secretary of the executive office of housing and economic development. "Taxpayer", any person, as defined in section 1 of chapter 63, whether or not subject to any taxes levied by this state. Section 64. (a) There is established an urban and industrial site reinvestment program under which taxpayers who invest in eligible projects may be allowed a credit against the tax imposed under chapter 63, in an amount equal to the percentage of their investment determined in accordance with subsection (h) of this section. (b) No project shall be deemed an eligible project unless such project shall, in the judgment of the secretary, be of sufficient size, by itself or in conjunction with related new investments, to generate a substantial return to the commonwealth's economy. (c) (1) The secretary may register managers of funds created for the purpose of investing in eligible projects. Any manager registered under this subsection shall have its primary place of business in this state. Each applicant shall submit an application under oath to the commissioner to be registered and shall furnish evidence satisfactory to the commissioner of its financial responsibility, integrity, professional competence and experience in managing investment funds. Failure to maintain adequate fiduciary standards with respect to investments made under this section shall constitute cause for the commissioner to revoke, after hearing, any registration granted under this section. The fund manager shall make an annual report on or

before March 1st, under oath, to the secretary and the commissioner of revenue, specifying the name, address and social security number or employer identification number of each investor, the year during which each investment was made by each investor, the amount of each investment, a description of the fund's investment objectives and relative performance and a description, including amounts, of all fees received by such manager in relation to each such fund.(2) Any manager of funds registered on or before the effective date of this section shall be deemed registered for all purposes under the provisions of this section upon submission, in writing, to the secretary of such manager's intention to act as a manager of funds under this section. The secretary may request from any such manager such information as the secretary may require relating to such manager's financial responsibility, integrity, professional competence and experience in managing investment funds.(d) Any taxpayer or fund manager wishing to make an investment under the provisions of this section shall apply to the secretary in accordance with the provisions of this section. The application shall contain sufficient information to establish that the investment is an eligible project, as appropriate, and information concerning the type of investment proposed to be made, its location, the number of jobs to be created or retained, physical infrastructure that might be created or preserved, feasibility studies or business plans for the investment, projected revenue the commonwealth may derive as a result of the investment and other information necessary to demonstrate the financial viability of the investment and to demonstrate that the investment will provide net benefits to the economy of, and employment for citizens of, the municipality and the commonwealth. In the case of an eligible industrial site investment project, how such project will meet the standards of remediation of the department of environmental protection. The secretary shall impose a fee for such application as the secretary deems appropriate.(e) (1) The secretary shall determine whether the proposed investment is an eligible project, whether the investment is economically viable only with use of the abandoned, urban and industrial site reinvestment program, the effects of the project on the municipality where the investment will be made, and whether the project would provide a net benefit to economic development and employment opportunities in the commonwealth and whether the project will conform to the state plan of conservation and development. The secretary shall require the taxpayer to submit the following additional information to evaluate the application:-

- (i) proof the investment is to an eligible urban, industrial, or abandoned site;
- (ii) information concerning the type of investment proposed to be made;
- (iii) its location;
- (iv) the number of jobs created or retained;
- (v) the physical infrastructure that might be created or preserve;
- (vi) if an industrial site, how the project will meet standards or remediation according to the department of environmental protection;
- (vii) if an abandoned site how the project will meet standards of returning property to a viable business condition; and

(viii) any other information necessary to demonstrate the financial viability of the investment and demonstrate the investment will provide net benefits to economy of, and employment for citizens of, the municipality and the commonwealth.

The office shall impose an appropriate fee for application.(2) The secretary shall prepare a revenue impact assessment that estimates the state and local revenue that would be generated as a result of the investment. The secretary shall prepare an economic feasibility study relative to such investment. The secretary may retain any such persons as the secretary deems appropriate to conduct such revenue impact assessment or economic feasibility study.(f) (1) The secretary, upon consideration of the application, the revenue impact assessment and any additional information that the secretary requires concerning a proposed investment, may approve an investment if the secretary concludes that the investment is an eligible project. If the secretary rejects an application, the secretary shall specifically identify the defects in the application and specifically explain the reasons for the rejection. The secretary shall render a decision on an application not later than 90 days from its receipt. The amount of the investment so approved shall not exceed the amount of state revenue that will be generated according to the revenue impact assessment prepared under this subsection.(2) The approval of an investment by the secretary may be combined with the exercise of any of the secretary's other powers, including, but not limited to, the provision of other forms of financial assistance.

(3) The secretary shall require the applicant to reimburse the commissioner for all or any part of the cost of any revenue impact assessment or economic feasibility study used in reviewing the application.(g) Upon approving an investment, the commissioner shall issue a certificate of eligibility certifying that the applicant has complied with the provisions of this section.(h) (1) There shall be allowed as a credit against the tax imposed under chapter 63 an amount equal to the following percentage of the moneys of the taxpayer invested in an eligible abandoned, urban investment or eligible industrial site investment approved by the commissioner with respect to the following income years of the taxpayer: (A) With respect to the income year in which the investment in the eligible abandoned, urban reinvestment project or eligible industrial site investment project was made and the 2 next succeeding income years, zero per cent; (B) with respect to the third full income year succeeding the year in which the investment in the eligible abandoned, urban reinvestment project or eligible industrial site investment project was made and the 3 next succeeding income years, 10 per cent; (C) with respect to the seventh full income year succeeding the year in which the investment in the eligible abandoned, urban reinvestment project or eligible industrial site investment project was made and the next 2 succeeding years, 20 per cent. The sum of all tax credits granted pursuant to the provisions of this section shall not exceed \$50,000,000 with respect to a single eligible urban reinvestment project, a single eligible industrial site investment project or a single abandoned property reinvestment project. The sum of all tax credits granted pursuant to the provisions of this section shall not exceed \$1,000,000,000.(2) Notwithstanding the provisions of subdivision (1) of this subsection, any applicant may, at the time of application, apply to the secretary for a credit that exceeds the

limitations established by this subsection. The secretary shall evaluate the benefits of such application and make recommendations to the general court relating to changes in the general statutes which would be necessary to effect such application if the secretary determines that the proposal would be of economic benefit to the commonwealth.(i) The credits allowed by this section may be claimed by a taxpayer who has made an investment (1) directly only if such investment has a total asset value of not less than \$2,000,000; or (2) through a fund managed by a fund manager registered under this section only if such fund: (A) Has a total asset value of not less than \$30,000,000 for the income year for which the initial credit is taken; and (B) has not less than 3 investors who are not related persons with respect to each other or to any person in which any investment is made other than through the fund at the date the investment is made. (j) Each taxpayer claiming the credit allowed under this section shall submit to the commissioner of revenue a copy of the eligibility certificate issued under subsection (h) of this section with its tax return for each taxable year for which a credit is claimed. (k) The tax credit allowed by this section, when made through a fund, shall only be available for investments in funds that are not open to additional investments or investors beyond the amount subscribed at the formation of the fund.(l) (1) The department of revenue may treat one or more corporations that are properly included in a combined corporation business tax return under the laws of the commonwealth as one taxpayer in determining whether the appropriate requirements under this section are met. Where corporations are treated as one taxpayer for purposes of this subsection, then the credit shall be allowed only against the amount of the combined tax for all corporations properly included in a combined return that, under the provisions of subdivision (2) of this subsection, is attributable to the corporations treated as one taxpayer.(2) The amount of the combined tax for all corporations properly included in a combined corporation business tax return that is attributable to the corporations that are treated as one taxpayer under the provisions of this subsection shall be in the same ratio to such combined tax that the net income apportioned to the commonwealth of each corporation treated as 1 taxpayer bears to the net income apportioned to the commonwealth, in the aggregate, of all corporations included in such combined return. Solely for the purposes of computing such ratio, any net loss apportioned to the commonwealth by a corporation treated as one taxpayer or by a corporation included in such combined return shall be disregarded.(m) Any taxpayer allowed a credit under this section may assign such credit to another taxpayer, provided such other taxpayer may claim such credit only with respect to a taxable year for which the assigning taxpayer would have been eligible to claim such credit and such other taxpayer may not further assign such credit. The taxpayer allowed such credit or the fund manager shall file with the department of revenue information requested by the secretary regarding such assignments, including, but not limited to, the current holders of credits as of the end of the preceding calendar year.(n) No taxpayer shall be eligible for a credit under (1) this section, and (2) chapter 63, for the same investment. No 2 taxpayers shall be eligible for any tax credit with respect to the same investment, employee or facility.(o) Any credit not used in the income year for which it was allowed may be carried forward for the 5 immediately succeeding income years until the full credit has been allowed.(p) Annually, on or before July 1st, credits

allowed by this section are claimed by a taxpayer with respect to an approved investment, the secretary may retain such persons as said secretary may deem appropriate to conduct a study to estimate the state revenue that is being and will be generated by such investment. Such economic impact study shall determine whether the state revenue actually generated by such investment is equal to the estimate of state revenue made at the time such investment was approved. If the sum of all state revenue actually generated by such investment is less than the amount of the total sum of tax credits claimed on the date of such analysis, the secretary may determine from the person retained pursuant to this subsection the applicable recapture amount and may revoke the certificate of eligibility issued under subsection (h) of this section. The secretary may require the taxpayer or the fund manager that made such approved investment to reimburse the secretary for all or any part of the cost of any economic impact study performed under this subsection.(r) (1) Any taxpayer which has claimed credits allowed by this section related to an investment concerning which the secretary has revoked the certificate of eligibility issued under subsection (h) of this section, shall be required to recapture such taxpayer's pro rata share of the recapture amount as determined under the provisions of subdivision (2) of this subsection and no subsequent credit shall be allowed unless such certificate of eligibility is reinstated under the provisions of subdivision (3) of this subsection.(2) If the taxpayer is required under the provisions of subdivision (1) of this subsection to recapture its pro rata share of the recapture amount during (A) the first, second, third and fourth year such credit was claimed, then 90 per cent of such share shall be recaptured on the tax return required to be filed for such year and (B) the fifth, sixth or subsequent such years, then 80 per cent of such share shall be recaptured on the tax return required to be filed for such year. The commissioner of revenue may recapture such share from the taxpayer who has claimed such credits. If the commissioner is unable to recapture all or part of such share from such taxpayer, the commissioner may seek to recapture such share from any taxpayer who has assigned credits in an amount at least equal to such share to another taxpayer. If the commissioner is unable to recapture all or part of such share from any such taxpayer, the commissioner may recapture such share from any fund through which the investment was made.(3) If the secretary has revoked the certificate of eligibility issued under subsection (h) of this section, such certificate of eligibility shall be reinstated by the secretary if, upon a request made by the taxpayer or fund manager who made such approved investment, an economic impact study conducted pursuant to subsection (r) shall determine that the sum of all state revenue actually generated by such investment is greater than the amount of the total sum of tax credits claimed on the date of such analysis, provided no such request shall be made pursuant to this subsection during the calendar year in which such certificate was revoked. For the purpose of determining whether such certificate shall be reinstated, the secretary shall, upon receipt of a request made under this subsection, obtain one such economic impact study per calendar year and may obtain additional such economic impact studies as the secretary deems appropriate.

Section 65. (a) If the real property of an eligible industrial site investment project, an eligible urban reinvestment project or an abandoned property reinvestment project, each as defined in section 64 which has received written approval from the secretary for a credit

under section 64, does not otherwise qualify for abatement or exemption of property taxes under any other provision of the general laws, the municipality in which such project is located may, for a period of 7 assessment years following the certification of the project under section 64, abate 50 per cent of the portion of the property tax due that is attributable to the increased value of such property as a result of the approved remediation, construction or other development under section 64. The abatement shall cease upon the sale or transfer of the property for any other purpose unless the municipality consents to its continuation. The municipality may also establish a recapture provision in the event of sale, provided such recapture shall not exceed the original amount of taxes abated.(b) A municipality shall notify the secretary not later than 30 days after granting any abatement of taxes under subsection (a) of this section. Such notice shall provide the owner or purchaser's name and the address of the property.(c) The secretary shall promulgate rules and regulations governing sections 64 and 65.